

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
International Business Reply Service
Contracts 1 (MC2009-14)
Negotiated Services Agreement

Docket No. CP2013-28

NOTICE AND ORDER CONCERNING INTERNATIONAL BUSINESS REPLY SERVICE
COMPETITIVE CONTRACT 1 PRODUCT

(Issued December 18, 2012)

I. INTRODUCTION

On December 14, 2012, the Postal Service filed notice of a contingency price arrangement (Pricing Arrangement) pursuant to a provision in an expired International Business Reply Service (IBRS) competitive contract.¹ The Postal Service intends for the new prices, which apply to certain postage-prepaid items returned from overseas locations to a U.S.-based entity, to begin January 1, 2013 and to continue indefinitely. *Id.* Attachment 1 at 1.

¹ Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 1 Negotiated Service Agreement, December 14, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5. Notice at 1.

The Postal Service requests that the Commission include the Pricing Arrangement within the IBRS Competitive Contract 1 product on the competitive products list based on its functional equivalence to IBRS contracts in Docket Nos. CP2009-20 and CP2009-22. *Id.* at 4.

II. CONTENTS OF FILING

The filing includes a Notice and the following attachments:

- Attachment 1—a redacted copy of the Postal Service’s notice to the customer concerning the intended application of contingency prices;
- Attachment 2—a redacted copy of the certification under 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors’ Decision No. 08-24; and
- Attachment 4—an application for non-public treatment of material filed under seal.

The Postal Service also provided a redacted copy of the Pricing Arrangement and supporting financial documentation as a public Excel file. *Id.* at 5.

Product history. The Commission added International Business Reply Service Contract 1 to the competitive product list in Order No. 178, following consideration in two baseline cases.² The controlling Governors’ Decision is No. 08-24. *Id.* at 1-2.

IBRS competitive contracts are for U.S.-based entities that seek a channel for returned merchandise or other articles from their overseas customers. These entities typically supply preprinted, prepaid IBRS packaging in which overseas customers can place used or defective consumer items and enter them into the mailstream at no direct cost. *Id.* at 1. The Postal Service’s contracting partner is the recipient of IBRS items, not the sender, and therefore has no control over the contingency that IBRS items might be tendered after expiration of the contract. *Id.* at 2. Given that costs are incurred in accepting and delivering these items, the Postal Service and its IBRS contracting

² See Docket Nos. M2009-14 and CP2009-20.

partners have agreed to let the Postal Service set prices to cover costs and potentially incentivize customers to enter into new arrangements. *Id.*

Instant docket. The contract that triggered the prices in the Pricing Arrangement was executed before the Commission's current rules for competitive and market dominant products took effect. *Id.* That contract expired March 31, 2008 and no successor contract was executed. The Postal Service asserts that the prices in the Pricing Arrangement occur under a surviving contractual term. *Id.* It expects the prices to apply to an extremely small number of postal items due to the mailer's profile and the passage of time since expiration of the contract. *Id.* at 4.

Related dockets. The Postal Service states that it has filed three previous notices of changes in contingency prices under the underlying expired contract (covering calendar years 2010, 2011 and 2012), and that the Commission has added each pricing arrangement to the competitive product list under the IBRS Competitive Contract 1 product based on functional equivalence. *Id.* at 3-4. The Postal Service addresses several points about the status of the underlying contract under Commission rules, and concludes that filing materials under 39 CFR 3015.5, as it has done here, resolves any inconsistency. *Id.* at 4.

Functional equivalency. The Postal Service asserts that the Pricing Arrangement is essentially identical to those envisioned in the contracts the Commission included in the IBRS Competitive Contract 1 product in Docket Nos. CP2009-20 and CP2009-22, with minor procedural variations due to different negotiation outcomes. *Id.* at 5-6. It asserts that the nature of the service provided in all three contracts is essentially the same. *Id.* at 6. The Postal Service also incorporates by reference its position on functional equivalence in Docket No. CP2009-22. *Id.* at 6.

III. COMMISSION ACTION

The Commission establishes Docket No. CP2013-28 for consideration of matters raised in the Notice. The Commission invites comments on whether the Pricing Arrangement is consistent with the requirements of 39 CFR 3015.5 and the policies of

39 U.S.C. 3632 and 3633. The Commission also invites comments on the Postal Service's intention to have the new contingency prices apply indefinitely. Comments are due no later than December 27, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's website at <http://www.prc.gov>. Information on how to obtain access to nonpublic material appears at 39 CFR 3007.40.

The Commission appoints James F. Callow to represent the interest of the general public (Public Representative) in this case.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. CP2013-28 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public.
3. Comments by interested persons in this proceeding are due no later than December 27, 2012.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary